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19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF NEVADA**

21 TYLER WALL and LORISSA HOTTEL,
22 Plaintiffs,
23 vs.

CASE NO.:

24 AVON PRODUCTS, INC.;
BARRETT'S MINERALS INC.;
25 BRENNTAG NORTH AMERICA, INC.
(sued individually and as successor-in-interest to
26 MINERAL PIGMENT SOLUTIONS, INC. and
as successor-in-interest to WHITTAKER
27 CLARK & DANIELS, INC.);
BRENNTAG SPECIALTIES LLC f/k/a
28 BRENNTAG SPECIALTIES, INC. f/k/a
MINERAL PIGMENT SOLUTIONS, INC.

JURY TRIAL DEMANDED

(sued individually and as successor-in-interest to WHITTAKER CLARK & DANIELS, INC.); CHARLES B. CHRYSTAL COMPANY, INC.; CHATTEM, INC. a subsidiary of SANOFI-AVENTIS U.S. LLC (sued individually and as successor-in-interest to BLOCK DRUG CORPORATION, successor-in-interest to THE GOLD BOND STERILIZING POWDER COMPANY a/k/a THE GOLD BOND COMPANY); COTY, INC.; PFIZER INC.; SPECIALTY MINERALS INC. (sued individually and as a subsidiary of MINERALS TECHNOLOGIES INC.); and WHITTAKER CLARK & DANIELS, INC.,

Defendants.

ORIGINAL COMPLAINT FOR DAMAGES

Come now Plaintiffs, TYLER WALL and LORISSA HOTTEL, by and through their counsel of record, and hereby state their Original Complaint for Damages as follows:

1. This action arises from certain injuries incurred by Plaintiff TYLER WALL. Plaintiff TYLER WALL has contracted and has otherwise been diagnosed as suffering from malignant pleural mesothelioma. Malignant pleural mesothelioma is a rapidly debilitating and fatal form of cancer affecting the lining of an individual's lungs, the only known cause of which in North America is asbestos exposure. Plaintiff TYLER WALL was diagnosed as suffering from malignant pleural mesothelioma on January 12, 2021.

SUBJECT MATTER JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the amount in controversy as to the Plaintiffs exceeds \$75,000.00, exclusive of interest and costs, and because complete diversity exists between the parties as Plaintiffs are citizens of the State of Idaho, which is different from the state where Defendants are incorporated and have their principal place of business.

3. Venue is proper in this Court pursuant 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to this lawsuit occurred in this District where Defendants are subject to personal jurisdiction in accordance with 28 U.S.C. § 1391 (c).

4. Plaintiffs have satisfied all conditions precedent to the filing of this action.

5. All of the named Defendants listed on the caption are foreign corporations who are amenable to jurisdiction in the courts of Nevada by virtue of their respective conduct of substantial and/or systematic business in Nevada which subjects them to the jurisdiction of the Nevada Courts pursuant to the Nevada Long-Arm Statute. Each Defendant corporation does or in the past mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of raw asbestos fibers of various kinds and grades, and/or asbestos-containing products, and/or asbestos-containing talc and/or chalk, and/or other finished and unfinished asbestos-containing talcum powder products, and/or any other powder-like product, and/or asbestos-containing cosmetics (hereinafter collectively referred to as “Defendants’ Products”) which are or in the past were sold, distributed, and used in Nevada. As mentioned above, Plaintiff TYLER WALL was exposed to Defendants’ Products purchased in and while he was residing in Nevada.

PARTIES

6. Plaintiffs TYLER WALL and LORISSA HOTTEL are residents and citizens of the City of Chubbuck, State of Idaho.

7. Defendant, AVON PRODUCTS, INC., was and is a company incorporated under the laws of the State of New York with its principal place of business in New York. At all times material hereto, AVON PRODUCTS, INC. was a manufacturer of asbestos-containing Avon talcum powder products. AVON PRODUCTS, INC. has and does business in the State of Nevada.

8. Defendant, BARRETTS MINERALS INC., was and is a company incorporated under the laws of the State of Delaware with its principal places of business in Montana and New York. At

1 all times material hereto, BARRETTS MINERALS INC. was a supplier of asbestos-containing talc.
2 BARRETTS MINERALS INC. has and does business in the State of Nevada.

3 9. Defendant, BRENNTAG NORTH AMERICA, INC. (sued individually and as
4 successor-in-interest to MINERAL PIGMENT SOLUTIONS, INC. and as successor-in-interest to
5 WHITTAKER CLARK & DANIELS, INC.), was and is a company incorporated under the laws of
6 the State of Delaware with its principal place of business in Pennsylvania. At all times material hereto,
7 BRENNTAG NORTH AMERICA, INC. (sued individually and as successor-in-interest to
8 MINERAL PIGMENT SOLUTIONS, INC. and as successor-in-interest to WHITTAKER CLARK
9 & DANIELS, INC.) was a supplier of asbestos-containing talc. BRENNTAG NORTH AMERICA,
10 INC. (sued individually and as successor-in-interest to MINERAL PIGMENT SOLUTIONS, INC.
11 and as successor-in-interest to WHITTAKER CLARK & DANIELS, INC.) has and does business in
12 the State of Nevada.
13

14 10. Defendant, BRENNTAG SPECIALTIES LLC f/k/a BRENNTAG SPECIALTIES,
15 INC. f/k/a MINERAL PIGMENT SOLUTIONS, INC. (sued individually and as successor-in-interest
16 to WHITTAKER CLARK & DANIELS, INC.), was and is a limited liability company
17 incorporated under the laws of the State of Delaware with its principal places of business in New
18 Jersey. At all times material hereto, BRENNTAG SPECIALTIES LLC f/k/a BRENNTAG
19 SPECIALTIES, INC. f/k/a MINERAL PIGMENT SOLUTIONS, INC. (sued individually and as
20 successor-in-interest to WHITTAKER CLARK & DANIELS, INC.) was a supplier of asbestos-
21 containing talc. BRENNTAG SPECIALTIES LLC f/k/a BRENNTAG SPECIALTIES, INC. f/k/a
22 MINERAL PIGMENT SOLUTIONS, INC. (sued individually and as successor-in-interest to
23 WHITTAKER CLARK & DANIELS, INC.) has and does business in the State of Nevada.
24

25 11. Defendant, CHARLES B. CHRYSTAL COMPANY, INC., was and is a company
26 incorporated under the laws of the State of New York with its principal place of business in
27 Connecticut. At all times material hereto, CHARLES B. CHRYSTAL COMPANY, INC. was a
28

1 supplier of asbestos-containing talc. CHARLES B. CHRYSTAL COMPANY, INC. has and does
2 business in the State of Nevada.

3 12. Defendant, CHATTEM, INC. a subsidiary of SANOFI-AVENTIS U.S. LLC (sued
4 individually and as successor-in-interest to BLOCK DRUG CORPORATION, successor-in-interest
5 to THE GOLD BOND STERILIZING POWDER COMPANY a/k/a THE GOLD BOND
6 COMPANY), was and is a company incorporated under the laws of the State of Tennessee with its
7 principal place of business in Tennessee. At all times material hereto, CHATTEM, INC. a subsidiary
8 of SANOFI-AVENTIS U.S. LLC (sued individually and as successor-in-interest to BLOCK DRUG
9 CORPORATION, successor-in-interest to THE GOLD BOND STERILIZING POWDER
10 COMPANY a/k/a THE GOLD BOND COMPANY) was a manufacturer of asbestos-containing Gold
11 Bond Foot Powder. CHATTEM, INC. a subsidiary of SANOFI-AVENTIS U.S. LLC (sued
12 individually and as successor-in-interest to BLOCK DRUG CORPORATION, successor-in-interest
13 to THE GOLD BOND STERILIZING POWDER COMPANY a/k/a THE GOLD BOND
14 COMPANY) has and does business in the State of Nevada.

15 13. Defendant, COTY, INC., was and is a company incorporated under the laws of the
16 State of Delaware with its principal place of business in New York. At all times material hereto,
17 COTY, INC. was a manufacturer of asbestos-containing Coty Airspun Loose Face Powder. COTY,
18 INC. has and does business in the State of Nevada.

19 14. Defendant, PFIZER INC., was and is a company incorporated under the laws of the
20 State of Delaware with its principal place of business in New York. At all times material hereto,
21 PFIZER INC. was a supplier of asbestos-containing talc. PFIZER INC. has and does business in the
22 State of Nevada.

23 15. Defendant, SPECIALTY MINERALS INC. (sued individually and as a subsidiary of
24 MINERALS TECHNOLOGIES INC.), was and is a company incorporated under the laws of the
25 State of Delaware with its principal place of business in Pennsylvania. At all times material hereto,

1 SPECIALTY MINERALS INC. (sued individually and as a subsidiary of MINERALS
2 TECHNOLOGIES INC.) was a supplier of asbestos-containing talc. SPECIALTY MINERALS
3 INC. (sued individually and as a subsidiary of MINERALS TECHNOLOGIES INC.) has and does
4 business in the State of Nevada.

5
6 16. Defendant, WHITTAKER CLARK & DANIELS, INC., was and is a company
7 incorporated under the laws of the State of New Jersey with its principal place of business in New
8 Jersey. At all times material hereto, WHITTAKER CLARK & DANIELS, INC. was a supplier of
9 asbestos-containing talc. WHITTAKER CLARK & DANIELS, INC. has and does business in the
10 State of Nevada.

11 **FACTUAL BACKGROUND**

12
13 17. Plaintiff TYLER WALL was wrongfully exposed to and inhaled, ingested or
14 otherwise absorbed asbestos fibers, an inherently dangerous toxic substance, through his late
15 mother's, Andrea Anderson's, regular and frequent use of Johnson's Baby Powder on Plaintiff as
16 an infant and child from approximately 1987 to 1996, through his father's, Leslie Wall's, regular
17 and frequent use of Johnson's Baby Powder on Plaintiff as an infant from approximately 1987 to
18 1990, and through his stepfather's, Steve Valerio's, regular and frequent use of Johnson's Baby
19 Powder on Plaintiff as an infant from approximately 1988 to 1990. Plaintiff was also exposed to
20 asbestos through his late mother's regular and frequent use of Johnson's Baby Powder while in
21 close proximity to Plaintiff from approximately 1992 to 2004, and Avon talcum powders while in
22 close proximity to Plaintiff from approximately 1988 to 1996. Plaintiff was also exposed to
23 asbestos through his regular and frequent personal use of Gold Bond Foot Powder from
24 approximately 1999 to 2003. Plaintiff was also exposed to asbestos through his wife's, Plaintiff
25 LORISSA HOTTEL's, regular and frequent use of Johnson's Baby Powder on their children while
26 in close proximity to Plaintiff from approximately 2014 to 2020, and through her regular and
27 frequent use of Avon talcum powders and Coty Airspun loose face powder while in close
28

1 proximity to Plaintiff from approximately 2010 to 2020. During these time periods, Plaintiff
2 resided in the following locations: Colorado Springs, Colorado, from approximately 1987 to 1990;
3 Farmington, New Mexico, from approximately 1990 to 1992; Las Vegas, Nevada, from
4 approximately 1993 to 2002; Pocatello, Idaho, from approximately 2002 to 2020, and 2021 to the
5 present time; and El Paso, Texas, from approximately 2020 to 2021. While Plaintiff's family
6 members used these asbestos-containing products while in close proximity to Plaintiff,
7 dangerously high levels of asbestos fibers were released into the air, and these fibers were
8 frequently inhaled and ingested by Plaintiff TYLER WALL.

10 18. Plaintiff TYLER WALL was exposed to Defendants' Products which were
11 manufactured, sold, or distributed by the Defendants.

12 19. At all times herein set forth, Defendants' Products were being employed in the
13 manner and for the purposes for which they were intended.

14 20. Plaintiff TYLER WALL's exposure to and inhalation or absorption of asbestos
15 fibers emanating from the use of Defendants' Products was completely foreseeable and could or
16 should have been anticipated by the Defendants.

17 21. Defendants knew or should have known that the asbestos fibers contained in
18 Defendants' Products had a toxic, poisonous, and highly deleterious effect upon the health of
19 persons inhaling or otherwise absorbing them.

20
21
22 **FIRST CAUSE OF ACTION**
NEGLIGENCE AGAINST ALL DEFENDANTS

23 22. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth
24 herein.

25 23. At all times herein relevant, Defendants had a duty to exercise reasonable care and
26 caution for the safety of Plaintiff TYLER WALL and others personally using and around
27 Defendants' Products.
28

1 24. At all material times, Defendants are or were miners, manufacturers, distributors,
2 processors, importers, converters, compounders, and/or retailers of raw asbestos fiber of
3 Defendants' Products.

4 25. The Defendants, acting through their agents, servants, and/or employees caused
5 certain Defendants' Products to be placed in the stream of interstate commerce with the result that
6 Defendants' Products came into use by or were used in close proximity to Plaintiff TYLER WALL.

7 26. Plaintiff TYLER WALL was exposed to asbestos through his personal use and his
8 family members' use of Defendants' Products which were mined, manufactured, processed,
9 imported, converted, compounded, and/or sold by the Defendants, most of the exposure being
10 within the State of Nevada.

11 27. Plaintiff TYLER WALL was exposed to Defendants' Products, which exposure
12 directly and proximately caused him to develop an illness known and designated as mesothelioma.
13

14 28. Defendants knew or should have known that the asbestos fibers contained in
15 Defendants' Products had a toxic, poisonous, and highly deleterious effect upon the health of persons
16 inhaling or otherwise absorbing them.

17 29. Defendants, acting by and through their servants, agents and employees duly
18 authorized and acting within the scope and authority of their employment had a duty to design,
19 manufacture and sell Defendants' Products that were not unreasonably dangerous or defective
20 and/or a duty to warn Plaintiff TYLER WALL, his family members, and foreseeable users of and
21 bystanders to Defendants' Products of the dangers and defects which the Defendants created,
22 knew, or within the exercise of reasonable care should have known, to render them safe for their
23 intended and foreseeable uses.

24 30. Plaintiff TYLER WALL, through his family members' use and through his
25 personal use, was exposed to Defendants' Products that were manufactured, processed, distributed,
26 supplied and/or sold by Defendants. Defendants knew or should have known that persons such as
27
28

1 Plaintiff TYLER WALL would come into contact with, be in close proximity to, and would be
2 exposed to Defendants' Products.

3 31. Plaintiff TYLER WALL sustained injuries, illnesses, disabilities and/or damages
4 caused by no fault of his own and which could not be avoided through the use of reasonable care.
5 Plaintiff TYLER WALL's development of an asbestos-related disease was directly and
6 proximately caused by the negligence and carelessness of Defendants in that they manufactured,
7 processed, sold, supplied or otherwise put Defendants' Products into the market and into the stream
8 of interstate commerce while they knew, or in the exercise of ordinary care should have known,
9 that Defendants' Products were deleterious, poisonous, cancer-causing and/or inherently
10 dangerous and harmful to Plaintiff TYLER WALL's body, lungs, respiratory system, skin, health,
11 and general well-being. Further, Defendants knew, or in the exercise of reasonable care should
12 have known, that Plaintiff TYLER WALL and his family members would not know of such
13 dangers to Plaintiff's health.
14
15

16 32. Defendants' actions, as stated herein, also constituted a conscious and flagrant
17 disregard of the rights and safety of Plaintiff TYLER WALL, and by engaging in such actions,
18 Defendants acted with the necessary malice, fraud, and oppression that justifies holding them liable
19 for punitive damages.
20

21 33. Specifically, Defendants are guilty of one or more of the following acts or
22 omissions amounting to fraudulent misconduct, malice, and gross negligence:

- 23 a. Intentionally or with gross negligence disregarded the safety of Plaintiff
24 TYLER WALL by including asbestos in Defendants' Products, or using
25 asbestos, even though it was completely foreseeable and could or should
26 have been anticipated that persons such as Plaintiff, who was personally
27 using or around Defendants' Products, would inhale or otherwise absorb
28 asbestos;

- 1 b. Intentionally or with gross negligence disregarded the safety of Plaintiff by
2 including asbestos in Defendants' Products, or using asbestos, when the
3 Defendants knew or should have known that said asbestos fibers would have
4 a toxic, poisonous and highly deleterious effect upon the health of persons
5 inhaling or otherwise absorbing them;
6
7 c. Intentionally or with gross negligence disregarded the safety of Plaintiff by
8 including asbestos in Defendants' Products, or using asbestos, when
9 adequate substitutes for the asbestos in them were available;
10 d. Intentionally or with gross negligence disregarded the safety of Plaintiff by
11 removing any warnings regarding the dangers of asbestos from the packing
12 of Defendants' Products or on Defendants' Products themselves supplied to
13 persons working with and around said Products in their intended and/or
14 reasonably foreseeable manner;
15
16 e. Intentionally or with gross negligence disregarded the safety of Plaintiff by
17 failing to provide any or adequate warnings to persons working with and
18 around Defendants' Products of the dangers of inhaling or otherwise
19 absorbing asbestos fibers in them;
20
21 f. Intentionally or with gross negligence disregarded the safety of Plaintiff by
22 failing to provide any or adequate instructions concerning the safe methods
23 of working with and being around Defendants' Products, including specific
24 instructions on how to avoid inhaling or otherwise absorbing the asbestos
25 fibers said Products;
26
27 g. Intentionally or with gross negligence disregarded the safety of Plaintiff by
28 failing to conduct tests on Defendants' Products manufactured, sold,
 delivered or installed by the Defendants in order to determine the hazards

1 to which persons such as Plaintiff might be exposed while working with and
2 around said Products;

3 h. Intentionally or with gross negligence disregarded the safety of Plaintiff by
4 failing to adequately label, warn, package, market, distribute, install,
5 remove, or use asbestos in a reasonable manner which would minimize or
6 eliminate the escape of asbestos dust fibers, therefore adding to the exposure
7 of Plaintiff;

8
9 i. Intentionally or with gross negligence disregarded the safety of Plaintiff by
10 failing to take adequate steps to remedy the above failures including, but
11 not limited to: (1) failure to recall or require removal of Defendants'
12 Products, coupled with; (2) ongoing failure to conduct research as to how
13 to cure or minimize asbestos injuries and how to use, install, or distribute
14 asbestos so as to render it safe; and, (3) failure to promptly and safely
15 remove asbestos in place;

16
17 j. Intentionally or with gross negligence disregarded the safety of Plaintiff by
18 failing to require and/or advise persons such as Plaintiff of hygiene practices
19 designed to reduce and/or prevent the escape of asbestos dust fibers and to
20 avoid inhaling or otherwise absorbing the asbestos dust fibers in said
21 Products.
22

23 34. Defendants, at the time of designing, manufacturing, distributing, selling, or
24 otherwise placing Defendants' Products into the stream of commerce knew, or in the exercise of
25 reasonable care should have known, about the risks associated with said Products. Defendants'
26 Products were defective at the time they left the control of the Defendants.

27 35. Defendants were negligent and breached their duty of due care to Plaintiff TYLER
28 WALL by taking or failing to take the actions as previously alleged to avoid harm to Plaintiff and

1 other foreseeable users, in light of the reasonably foreseeable dangers caused by the design,
2 manufacture, sale, and/or distribution of Defendants' Products at issue in the stream of commerce.

3 36. The hazards posed by exposure to Defendants' Products and the resulting injuries
4 and damages to Plaintiff TYLER WALL were reasonably foreseeable, or should have been
5 reasonably foreseen by Defendants.

6
7 37. Subsequent to the initial sale of Defendants' Products to Plaintiff TYLER WALL
8 and his family members, Defendants continued to accumulate additional knowledge regarding the
9 hazards of Defendants' Products.

10 38. Defendants had a continuing duty to provide post-sale warnings of dangers
11 associated with Defendants' Products, and post-sale recall to users or to recall products that were
12 discovered to be unreasonably dangerous.

13
14 39. At the time Defendants' Products left Defendants' control without adequate
15 warnings or instructions, Defendants created an unreasonably dangerous condition that they knew
16 or should have known would pose a substantial risk of harm to reasonably foreseeable claimants
17 such as Plaintiff TYLER WALL. In the alternative, after Defendants' Products left Defendants'
18 control, Defendants became aware of or in the exercise of ordinary care should have known that
19 their Products posed a substantial risk of harm to reasonably foreseeable users and bystanders,
20 such as Plaintiff, and failed to take reasonable steps to give adequate warning or instruction or to
21 take any other reasonable action under the circumstances.

22
23 40. As a direct, actual and proximate result of one or more of the foregoing acts, breach
24 of duty and/or omissions on the part of the Defendants, Plaintiff TYLER WALL was exposed to
25 and inhaled or otherwise absorbed asbestos fibers causing Plaintiff to develop mesothelioma.
26 Plaintiff has been compelled to expend and become liable for large sums of monies for hospital,
27 medical and other health care services necessary for the treatment of his asbestos-induced
28 mesothelioma and condition. Plaintiff has also experienced great physical pain and mental anguish

1 as a result of his asbestos-induced mesothelioma, as well as a substantial loss of income.

2 41. As a result of the above, Plaintiffs seek damages as hereinafter demanded.

3 **SECOND CAUSE OF ACTION**
4 **STRICT LIABILITY AGAINST ALL DEFENDANTS**

5 42. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the
6 extent necessary, plead this cause of action in the alternative.

7 43. At all material times, Defendants were engaged in the manufacture, distribution,
8 supply, sale, assembly, production, construction, and/or specification of Defendants' Products.

9 44. Defendants, acting through their agents, servants, and/or employees, placed in the
10 stream of commerce Defendants' Products which were designed, manufactured, distributed,
11 marketed, and/or sold by Defendants and that were defective, unsafe and unreasonably dangerous
12 for their intended and/or foreseeable use with the result that said Products came into use by Plaintiff
13 TYLER WALL and his family members.
14

15 45. Defendants placed Defendants' Products on the market and knew or should have
16 known they would be used without inspection for defects.
17

18 46. Defendants failed to design, manufacture, market, distribute, supply, and sell
19 Defendants' Products in such a manner as to render them safe for their intended and foreseeable
20 uses. By way of example, and not limitation, Defendants:

21 a. Failed to design, develop, manufacture and test Defendants' Products in
22 such a manner as to render them safe for their intended and foreseeable use,
23 when Defendants knew or should have known that the foreseeable use of
24 and intended purpose of Defendants' Products was by persons, specifically
25 Plaintiff TYLER WALL and his family members, who used Defendants'
26 Products causing Plaintiff's exposures to asbestos;
27

28 b. Marketed and sold Defendants' Products that were in an unreasonably

1 dangerous and defective condition, presenting a hazardous risk to Plaintiff's
2 well-being;

3 c. Failed to recall or attempt to repair the defective Defendants' Products when
4 Defendants are and have been aware of the propensity of said Products to
5 injure Plaintiff;

6 d. Failed to properly test Defendants' Products to ensure that they were
7 reasonably safe for use throughout their lifetime.
8

9 47. Moreover, when Defendants' Products left Defendants' possession and were placed
10 on the market, they were defective in that:

11 a. When used in the intended or reasonably foreseeable manner, Defendants'
12 Products were not reasonably safe for their intended use;

13 b. When used in the intended or reasonably foreseeable manner, Defendants'
14 Products failed to perform as safely as would be expected by an ordinary
15 user or consumer;

16 c. When used in the intended or reasonably foreseeable manner, Defendants'
17 Products caused a risk of harm beyond that which would be contemplated
18 by an ordinary user or consumer;

19 d. Defendants' Products were defectively designed because they were more
20 dangerous than would be contemplated by an ordinary user or consumer,
21 and also because the risks of the products outweighed their benefits;

22 e. Defendants' Products were defectively manufactured as they failed to
23 comply with their own specifications.
24

25 48. Defendants violated the requirements of Section 402A of the Restatement of Torts
26 2d, all of which proximately resulted in Plaintiff TYLER WALL's asbestos-related mesothelioma.
27

28 49. Additionally, although Defendants knew, or in the exercise of ordinary care should

1 have known, that Defendants' Products were deleterious and highly harmful to Plaintiff TYLER
2 WALL's health, Defendants nonetheless:

- 3 a. Failed to advise or warn Plaintiff and his family members of the dangerous
4 characteristics of Defendants' Products;
- 5 b. Failed to provide Plaintiff and his family members with the knowledge as to
6 what would be reasonably safe and sufficient wearing apparel and proper
7 protective equipment and appliances, if any, to protect Plaintiff from being
8 harmed by exposure to Defendants' Products;
- 9 c. Failed to place any or adequate warnings on containers of Defendants'
10 Products alerting Plaintiff and his family members of the dangers to
11 Plaintiff's health caused by contact with Defendants' Products; and
12
- 13 d. Failed to take reasonable precautions or to exercise reasonable care to
14 publish, adopt and enforce a safety plan and/or a safe method of handling
15 Defendants' Products in a safe manner.
16

17 50. Defendants' Products were also defective due to any and inadequate warnings or
18 instructions during and after the time of marketing in that Defendants knew, or in the exercise of
19 reasonable care should have known, about the risks associated with Defendants' Products and
20 failed to provide any, reasonable and/or adequate warnings or instructions in light of the likelihood
21 that said Products would cause serious physical harm to Plaintiff TYLER WALL.
22

23 51. As a direct and proximate result of using Defendants' Products for the general
24 purposes for which they were designed and intended, Plaintiff TYLER WALL was exposed to
25 asbestos and was injured as described herein.

26 52. Accordingly, Defendants are strictly liable to Plaintiff TYLER WALL for their
27 failure to warn and for the defective design and manufacture and/or marketing, distributing,
28 supplying and selling defective Defendants' Products.

53. As a result of the above, PLAINTIFFS seek damages as are hereinafter demanded.

THIRD CAUSE OF ACTION
PRODUCT LIABILITY – INADEQUATE DESIGN OR FORMULATION
AGAINST ALL DEFENDANTS

54. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

55. Defendants acted unreasonably in designing and/or formulating Defendants' Products which were harmful to Plaintiff TYLER WALL's body, lungs, respiratory system, skin and health. Defendants acted unreasonably in the following acts and/or omissions:

- a. Failing to adopt a practical, feasible, and otherwise reasonably alternative design that was safer, that could have been reasonably adopted, and that would have prevented or substantially reduced the risk of harm to individuals such as Plaintiff TYLER WALL without substantially impairing the usefulness, practicality or desirability of Defendants' Products; and
- b. Using a design that was so unreasonable that reasonable person, aware of the relevant facts, would not use Defendants' Products of this design.
- c. Allowing the use of talc that contains asbestos and asbestos fibers to be used in the manufacture of Defendants' Products when said Products were supposed to be asbestos free.

56. Defendant's unreasonable acts in designing Defendants' Products manufactured, distributed, sold and specified by Defendants were a proximate cause of Plaintiff TYLER WALL's development of mesothelioma, and as a consequence of which through no fault of his own, he was severely injured, disabled and damaged.

57. As a result of the above, Plaintiffs seek damages as are hereinafter demanded.

///

FOURTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY

58. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

59. The Defendants impliedly warranted that Defendants' Products were of good and merchantable quality and fit for their particular intended use.

60. The implied warranty made by the Defendants that Defendants' Products were of good and merchantable quality and fit for their particular intended use was breached in that certain harmful, poisonous, and deleterious matter was given off into the atmosphere during Plaintiff TYLER WALL's and his family members' use of Defendants' Products.

61. Defendants caused Plaintiff TYLER WALL's injuries, illnesses, disabilities, and damages as stated above by manufacturing, selling, installing, and distributing Defendants' Products which failed to meet express and implied warranties of merchantability and fitness for intended purposes upon which Plaintiff had a right to rely and did rely.

62. As a direct and proximate result of the implied warranty of good and merchantable merchantable quality and fitness for their particular intended use, Plaintiff TYLER WALL developed mesothelioma.

63. As a result of the above, Plaintiffs seek damages as are hereinafter demanded.

FIFTH CAUSE OF ACTION
WILLFUL AND WANTON CONDUCT

64. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

65. Plaintiff TYLER WALL and others in his position personally used and was in close proximity to Defendants' Products used and/or manufactured by the Defendants, and the exposure and hazard to each of them, in Plaintiff TYLER WALL's presence as well as others, was known

1 or in the exercise of reasonable care should have been anticipated by the Defendants and each of
2 them.

3 66. The Defendants have known or should have known since at least 1929 of medical
4 and scientific data which clearly indicated that Defendants' Products were hazardous to the health
5 and safety of Plaintiff TYLER WALL and others in Plaintiff's position, and prompted by
6 pecuniary motives the Defendants, individually and collectively, ignored and failed to act upon
7 said medical and scientific data and conspired to deprive the public and particularly the users of
8 said medical and scientific data, therefore depriving them of the opportunity of free choice as to
9 whether or not to expose themselves to Defendants' Products. As a result, Plaintiff TYLER WALL
10 was severely damaged as is set forth below.

11
12 67. The Defendants intentionally continued to conceal the dangers of asbestos exposure
13 from 1929 through 1970's, thus denying Plaintiff TYLER WALL the knowledge with which to
14 take necessary safety precautions, such as periodic x-rays and medical examinations, cessation of
15 smoking, and avoidance of further dust exposure. Specifically, Defendants' intentional, willful
16 and wanton conduct included the following acts and omissions:

- 17
18 a. failure to warn prior users when the Defendants had knowledge of the need
19 for monitoring due to prior exposure;
20
21 b. failure to issue recall type letters to prior users;
22
23 c. frustrating the publication of articles and literature from the 1930's through
24 at least 1976;
25
26 d. rejection by top management of advice of corporate officials to warn of the
27 hazards of Defendants' Products, such rejection being motivated by the
28 possibility of adverse effects on profits; and
29
30 e. delaying the use of and/or providing intentionally inadequate warnings on
31 Defendants' Products.

1 68. The acts and omissions of each of the Defendants as hereinabove set forth were
2 intentional, willful and wanton, and done with willful disregard of the safety of Plaintiff TYLER
3 WALL and others similarly situated at a time when each of the Defendants had knowledge, or
4 should have had knowledge of, the dangerous effect of Defendants' Products upon the body of
5 human beings, including Plaintiff TYLER WALL and others similarly situated, and even though
6 forewarned by tests, standards, promulgations of rules and regulations, statutes, and ordinances
7 recognized by the Defendants and subscribed to by them, nevertheless placed into the stream of
8 commerce for their own profit dangerous Defendants' Products with full knowledge that
9 Defendants' Products were being used and would be used in the future to the detriment of the
10 health of Plaintiff TYLER WALL and others similarly situated, and PLAINTIFFS are thereby
11 entitled to punitive damages.
12

13 69. Accordingly, as a result of the Defendants' conduct which was conducted willfully,
14 wantonly and with malice, and was grossly negligent and in total disregard for the health and safety
15 of users and bystanders such as Plaintiff TYLER WALL, Plaintiffs therefore seek exemplary and
16 punitive damages against Defendants to punish the Defendants for their actions, which were
17 willful, wanton, gross, with malice, and in total disregard of the health and safety of the users of
18 Defendants' Products.
19

20 **SIXTH CAUSE OF ACTION**
21 **FAILURE TO WARN**

22 70. Plaintiffs reallege the preceding paragraphs as if fully set forth herein and, to the
23 extent necessary, plead this cause of action in the alternative.
24

25 71. At all times material hereto, the Defendants knew or should have known of the
26 harmful effects and/or dangers of using and/or otherwise being exposed to Defendants' Products
27 and of exposure to inhalable asbestos.
28

1 72. Defendants had a pre- and post-sale duty to warn Plaintiff TYLER WALL and his
2 family members of the dangers associated with the use and/or inhalation of asbestos dust and
3 fibers.

4 73. Despite Defendants' knowledge of the harm and/or potential harm associated with
5 the use and/or inhalation of dust and fibers from Defendants' Products, the Defendants failed to
6 warn and/or inadequately warn Plaintiff TYLER WALL and his family members of the dangers
7 including, but not limited to:
8

- 9 a. Failing to provide adequate cautions, warnings, hazard statements and/or
10 explanations with Defendants' Products which should have been designed
11 to provide Plaintiff TYLER WALL and his family members knowledge
12 about the hazards caused by exposure to and/or dust from Defendants'
13 Products and how to eliminate such hazards;
- 14 b. Failing to provide adequate product inserts, informative brochures, training
15 literature, posters, and/or other written materials with Defendants' Products
16 which should have been designed to provide Plaintiff TYLER WALL and
17 his family members knowledge about the hazards caused by exposure to
18 and/or dust from Defendants' Products and how to eliminate such hazards;
- 19 c. Failing to conduct in-person training sessions with users and bystanders
20 designed to provide them knowledge about the hazards caused by exposure
21 to and dust from Defendants' Products, and how to eliminate the hazards;
- 22 d. Failing to adequately test and research Defendants' Products as to the
23 hazards
24 created during their use and failed thereafter to provide the results of such
25 tests and research to exposed persons such as Plaintiff TYLER WALL;
26
27
28

- e. Failing to inspect Defendants' Products to determine if the Defendants' Products being used were deleterious to the health of exposed users and bystanders;
- f. Failing to design, process and transport Defendants' Products in a manner intended to minimize exposure during conditions of normal use;
- g. Failing to specify and market Defendants' Products on the express agreement that necessary engineering controls, practices, and other industrial hygiene controls would be implemented in conjunction with use of Defendants' Products after it was known or should have been known that adequate protective measures were not being implemented;
- h. Failing to recall their defective Defendants' Products or manufacture a reasonably safer alternative;
- i. Failing to take adequate precautions and industrial hygiene measures to protect exposed individuals such as Plaintiff TYLER WALL when personally using and/or in close proximity to Defendants' Products including, but not limited to, providing protection from dust and fibers emanating from use; failing to provide warnings to Plaintiff TYLER WALL his family members that exposure to dust and fibers from Defendants' Products was hazardous and carcinogenic;
- j. Otherwise failing to act reasonably under the totality of the circumstances.

74. Despite Defendants' knowledge of the harm and/or potential harm associated with the use and/or inhalation of dust and fibers from Defendants' Products, Defendants acted unreasonably in failing to provide adequate warnings and/or instructions as to the hazards associated with exposure to Defendants' Products. Defendants had a continuing duty to provide post-sale warnings of dangers associated with Defendants' Products to users and bystanders.

1 75. At the time Defendants' Products left Defendants' control without adequate
2 warning or instruction, Defendants created an unreasonably dangerous condition that they knew
3 or should have known would pose a substantial risk of harm to a reasonably foreseeable claimant,
4 such as Plaintiff TYLER WALL. In the alternative, after Defendants' Products left Defendants'
5 control, Defendants became aware of or in the exercise of ordinary care should have known that
6 Defendants' Products posed a substantial risk of harm to a reasonably foreseeable user and
7 bystander such as Plaintiff TYLER WALL, and failed to take reasonable steps to give adequate
8 warning or instruction or to take any other reasonable action under the circumstances.
9

10 76. Defendants' failure to provide adequate warnings as to the hazards associated with
11 exposure to Defendants' Products or to provide proper instructions on the use, handling, and
12 storage of Defendants' Products caused Plaintiff TYLER WALL to develop mesothelioma and as
13 a consequence of which he was injured, disabled and damaged, therefore Plaintiffs hereby make a
14 claim for damages from the Defendants jointly and severally.
15

16 77. As a result of the Defendants' failure to warn, Plaintiff TYLER WALL suffered the
17 injuries, illnesses, disabilities and/or damages hereinafter alleged.

18 **SEVENTH CAUSE OF ACTION**
19 **FRAUD**

20 78. Plaintiffs reallege the preceding paragraphs as if fully set forth herein, and to the
21 extent necessary, plead this cause of action in the alternative.

22 79. **Fraudulent Misrepresentation;** Defendants are liable for their fraudulent
23 misrepresentations:

- 24 a. First, each of these Defendants, via its employees, agents, advertisements,
25 or any other authorized person or document, represented that certain
26 material facts and representations were true when they were not. The
27 specific identities of these employees, agents, advertisements, or any other
28

1 authorized persons or documents are maintained in Defendants' records.
2 Such records remain in the exclusive control of Defendants pursuant to
3 Defendants' respective document retention policies. While Plaintiffs do not
4 currently know all of the specific advertisements, or the names of all of the
5 employees, agents, or any other authorized persons who made the
6 representations, Plaintiffs will have access to this information once
7 discovery has commenced and will be able to specifically name the
8 advertisements as well as the employees, agents, or any other authorized
9 persons.
10

11 b. Second, Defendants falsely represented that the products they
12 manufactured, supplied, or specified for use were not hazardous to humans.
13 These false representations were made before and during the years that
14 Plaintiff TYLER WALL and his family members purchased and Plaintiff
15 was exposed to asbestos from Defendants' Products. Such false
16 representations were made either directly to Plaintiff and his family
17 members, or to a third party intending and reasonably expecting that the
18 substance of those false representations would be repeated to Plaintiff and
19 his family members.
20

21 c. Third, Defendants had knowledge or belief that the representations were
22 false when they made them, or they made the false representations
23 recklessly and without regard for their truth.
24

25 d. Fourth, Defendants intended to induce Plaintiff and his family members,
26 and/or the same class of persons as Plaintiff and his family members, to rely
27 and act on the false representations or their substance.
28

e. Fifth, Plaintiff and his family members reasonably and justifiably relied on

1 Defendants' false representations or the substance of these false
2 representations.

3 f. Sixth, Plaintiff TYLER WALL developed mesothelioma.

4 g. Seventh, Plaintiff's and his family members' justifiable reliance on those
5 false representations was a substantial factor in causing Plaintiff's
6 mesothelioma and the resulting damages thereto.
7

8 80. **Fraudulent Concealment (Nondisclosure):** Defendants are liable for their
9 fraudulent concealment (nondisclosure).

10 a. First, each of these Defendants made false representations that were so
11 misleading (e.g. misleading "half-truths") that they gave rise to a fraud
12 cause of action even in the absence of a specific relationship or transaction
13 as between each Defendant and Plaintiff TYLER WALL and his family
14 members. Specifically, Defendants stated that Defendants' Products could
15 be used safely while concealing that they were in fact lethal because they
16 contained and released asbestos fibers.
17

18 b. Second, Defendants (i) had exclusive knowledge of material facts that were
19 not known to and his family members (as set forth above) and
20 misrepresented those material facts to Plaintiff and his family members, (ii)
21 actively concealed those material facts from and his family members with
22 an intent to induce and his family members to act and rely on Defendants'
23 false representations and omissions of those material facts, (iii) made partial
24 representations but also suppressed material facts, as set forth above, and
25 (iv) made factual representations, but did not disclose facts which materially
26 qualified those representations. Such nondisclosures included Defendants
27 representing Defendants' Products as safe when used as intended and as fit
28

1 for the particular purpose for which they were marketed, while not
2 disclosing the facts that said Products contained asbestos that would become
3 airborne during the intended and foreseeable use of the Products, rendering
4 them dangerous and unfit for their intended purpose.

5 c. Third, each Defendant entered into a relationship and/or a transaction with
6 and his family members sufficient to give rise to a duty to disclose. For
7 example, Plaintiff and his family members used or Plaintiff otherwise
8 encountered Defendants' products that were purchased either directly from
9 Defendants, Defendants' authorized dealers or suppliers, or any other entity
10 upon which Defendants derived a direct monetary benefit directly from
11 Plaintiff's and his family members' purchase and use of the products. As
12 for another example, Defendants directly advertised their products to those
13 in Nevada and elsewhere as a symbol of freshness, cleanliness, and purity.
14 Defendants advertised and marketed their products as being only the beacon
15 of "freshness" and "comfort," eliminating friction on the skin, absorbing
16 "excess wetness," helping keep skin feeling dry and comfortable, "clinically
17 proven gentle and mild," and to promote beauty. The Defendants
18 compelled men and women through advertisements to dust themselves with
19 the products to mask odors, and to use them to promote beauty. Defendants
20 derived direct monetary benefit from consumers' use of their asbestos-
21 containing products because Plaintiff and his family members decided to
22 use or purchase Defendants' Products.

23 d. Fourth, Plaintiff and his family members did not know of the concealed
24 facts and false representations.
25
26
27
28

- 1 e. Fifth, Defendants intended to deceive Plaintiff and his family members by
2 concealing the facts, and/or by making false material representations
3 without disclosing additional facts that would have materially qualified
4 those representations, and Defendants intended to induce Plaintiff and his
5 family members to act in reliance upon the false representations or
6 omissions made.
7
- 8 f. Sixth, had the omitted information been disclosed, Plaintiff and his family
9 members would have reasonably behaved differently.
- 10 g. Seventh, Plaintiff TYLER WALL developed mesothelioma.
- 11 h. Eighth, each Defendant's concealment and intent to induce Plaintiff and his
12 family members to act and rely on the false representations were a
13 substantial factor in causing Plaintiff's mesothelioma and the resulting
14 damages thereto.
15

16 **81. Conspiracy to Commit Fraudulent Misrepresentation:** Plaintiffs hereby
17 incorporate by reference the allegations of Paragraph 79 as if fully stated herein. Defendants are
18 liable for their conspiracy to commit fraudulent misrepresentation.

- 19 a. First, Defendants were aware that their conspirators, which included all co-
20 Defendants and others, planned to commit fraudulent misrepresentation
21 against Plaintiff TYLER WALL and his family members, and/or the same
22 classes of persons as Plaintiff and his family members.
23
- 24 b. Second, Defendants agreed with their conspirators and intended that the
25 fraudulent misrepresentation be committed.
- 26 c. Third, Plaintiff developed mesothelioma.
27
28

- 1 d. Fourth, each Defendant's participation in the conspiracy was a substantial
2 factor in causing Plaintiff's mesothelioma and the resulting damages
3 thereto.

4 82. **Conspiracy to Commit Fraudulent Concealment (Nondisclosure):** Plaintiffs
5 hereby incorporate by reference the allegations of Paragraph 80 as if fully stated herein. All
6 Defendants are liable for their conspiracy to commit fraudulent concealment.
7

- 8 a. First, Defendants were aware that their conspirators, which included all co-
9 Defendants and others, planned to commit fraudulent concealment against
10 Plaintiff TYLER WALL and his family members, and/or the same class of
11 person as Plaintiff and his family members.

- 12 b. Second, Defendants agreed with their conspirators and intended that the
13 fraudulent concealment be committed.

- 14 c. Third, Plaintiff TYLER WALL developed mesothelioma.

- 15 d. Fourth, each Defendant's participation in the conspiracy was a substantial
16 factor in causing Plaintiff's mesothelioma and the resulting damages
17 thereto.
18

19 83. **Knowledge of Hazards:** At all times pertinent hereto, Defendants owed Plaintiff
20 TYLER WALL a duty, as provided for in the Restatement (Second) of Torts §552, and *Barmettler*
21 *v. Reno Air, Inc.*, 956 P2d 1382, 1387 (Nev. 1998), to abstain from injuring his person, property,
22 or rights. In violation of that duty, these Defendants, and each of them, did do the acts and
23 omissions, when a duty to act was imposed, as set forth herein, thereby proximately causing injury
24 to Plaintiff. Such acts and omissions consisted of acts falling within the Restatement (Second) of
25 Torts §552, and *Barmettler v. Reno Air, Inc.*, 956 P2d 1382, 1387 (Nev. 1998), and more
26 specifically were (i) making representations as fact when those representations were not true and
27 which the Defendants did not believe to be true, (ii) making assertions of fact that were not true,
28

1 which the Defendants had no reasonable ground for believing to be true, and (iii) the suppression
2 of facts when a duty existed to disclose them, all as are more fully set forth herein, and the violation
3 of which as to any one such item gave rise to a cause of action for violation of Plaintiff's rights as
4 provided for in the aforementioned statutes.

5
6 84. Since 1924, Defendants have known and possessed of true facts consisting of
7 medical and scientific data and other knowledge which clearly indicated that Defendants' Products
8 were and are hazardous to the health and safety of Plaintiff TYLER WALL and others similarly
9 situated. Defendants engaged in the following acts and omissions:

10 a. Did not label any of the aforementioned asbestos-containing products as to
11 the hazards of such products to the health and safety of Plaintiff and others
12 in his and his family members' positions using these products, and therefore
13 causing Plaintiff's exposures, when the knowledge of such hazards was
14 existing and known to Defendants, and each of them, since 1924. By not
15 labeling Defendants' Products as to their said hazards, Defendants, and each
16 of them, made false representations to Plaintiff and his family members that
17 it was safe for them to use and for Plaintiff to be exposed to Defendants'
18 Products when in fact these things were not true and Defendants did not
19 believe them to be true.

20
21 b. Suppressed information relating to the danger of using the aforementioned
22 products by requesting the suppression of information to Plaintiff and his
23 family members, Plaintiff's and his family members' classes of persons,
24 and the general public concerning the dangerous nature of the
25 aforementioned products to all persons, including users, bystanders and
26 household members, by not allowing such information to be disseminated
27
28 in a manner which would give general notice to the public and knowledge

1 of the hazardous nature thereof when Defendants were bound to disclose
2 such information.

3 c. Sold the aforementioned products to the public, including Plaintiff, his
4 family member and others in Nevada and other states without advising them
5 of the dangers of using such products, and dangers to those persons'
6 household members, when Defendants knew of such dangers and had a duty
7 to disclose such dangers. Thus, Defendants caused to be positively asserted
8 to Plaintiff, his family members, and the public false representations which
9 Defendants had no reasonable ground for believing to be true, in a manner
10 not warranted by the information possessed by Defendants, that it was safe
11 for Plaintiff and his family members to Defendants' Products, causing
12 Plaintiff's exposures to asbestos, and that said Products did not pose a risk
13 of harm.

14
15
16 d. Suppressed and continue to suppress from everyone, including Plaintiff and
17 his family members, medical, scientific data, and knowledge of the accurate
18 results of studies including, but not limited to, Waldemar C. Dreesen of the
19 United States Public Health Service's 1933 report to the National Safety
20 Council the results of a study conducted among tremolite, talc and slate
21 workers. The study indicated that the talc was a hydrous calcium
22 magnesium silicate, being 45% talc and 45% tremolite, and the National
23 Safety Council stated "The results of the study seemed to indicate a
24 relationship between the amount of dust inhaled and the effect of this dust
25 on the lungs of the workers." As early as 1934, the National Safety Council
26 was publishing information stating that "a cause of severe pulmonary injury
27 is asbestos, a silicéte of magnesium." In the September 1935 issue of
28

1 National Safety News, an article entitled *No Halfway Measures in Dust*
2 *Control* by Arthur S. Johnson reported lowered lung capacity resulting from
3 “asbestosis” and “similar conditions” that developed “from exposure to
4 excess of many mineral dusts relatively low in free silica content.” The
5 article further noted that claims for disabilities from workers who alleged
6 exposure to “clay, talc, emery, and carborundum dusts” had “claims
7 prosecuted successfully.” The article concluded that “[i]n the absence of
8 adequate diagnoses, occupational histories and a more satisfactory method
9 of adjudicating claims than prosecution at common law, we must conclude
10 that it is necessary to find a practical method for controlling all mineral
11 dusts.”
12

- 13 e. Belonged to, participated in, and financially supported the Industrial
14 Hygiene Foundation, Asbestos Information Association, the Asbestos
15 Textile Institute (ATI), and other industry organizations, including the
16 Cosmetic, Toiletry, and Fragrance Association (now known as the Personal
17 Care Products Council), which actively promoted the suppression of
18 information of the dangers to users of and bystanders to the aforementioned
19 products for and on behalf of Defendants, and each of them, thereby
20 misleading Plaintiff and his family members to Plaintiff’s prejudice through
21 the suggestions and deceptions set forth above in this cause of action. ATI’s
22 Dust Control Committee, which changed its name to the Air Hygiene
23 Committee of ATI, was specifically enjoined to study the subject of dust
24 control; discussions in such committee were held many times of (i) the
25 dangers inherent in asbestos and the dangers which arise from the lack of
26
27
28

1 control of dust and (ii) the suppression of such information from 1946 to a
2 date unknown to Plaintiffs at this time.

3 f. Knew and possessed medical and scientific information of the connection
4 between inhalation of asbestos fibers and asbestosis in 1930 with the study
5 of mine and mill workers at the Thetford asbestos mines in Quebec, Canada,
6 and the study of workers at Raybestos-Manhattan plants in Manheim and
7 Charleston, South Carolina. This information was disseminated through the
8 ATI and other industry organizations to all other Defendants, and each of
9 them, herein. Between 1942 and 1950, Defendants, and each of them, knew
10 and possessed medical and scientific information of the connection between
11 the inhalation of asbestos fibers and cancer, which information was
12 disseminated through the ATI and other industry organizations to all other
13 Defendants herein. Thereby, Defendants made false representations that
14 were suggested as facts, which were likely to and did mislead Plaintiff and
15 his family members for want of communication of true facts, which
16 consisted of the previously described medical and scientific data and other
17 knowledge by not giving Plaintiff and his family members the true facts
18 concerning such knowledge of these dangers, when Defendants were bound
19 to disclose them.

20 g. Failed to warn Plaintiff, his family members, and others similarly situated
21 of the hazardous nature of Defendants' Products. In 1968, a study presented
22 at the American Industrial Hygiene Conference and published in the
23 American Industrial Hygiene Association Journal concluded that "[all] of
24 the 22 talcum products analyzed have a... fiber content. . . averaging 19%.

25 The fibrous-material was predominantly talc and contained minor amounts

1 of tremolite, anthophyllite, and chrysotile as these are often present in
2 fibrous talc mineral deposits. Unknown significant amounts of such
3 materials in products that may be used without precautions may create an
4 unsuspected problem.” [Cralley, L.J., et al.; *Fibrous and Mineral Content*
5 *of Cosmetic Talcum Products*, 29 Ant Ind. Hyg. Assoc. J.350 (1968).]
6 Defendants failed to warn Plaintiff, his family members, and others
7 similarly situated that Defendants’ Products are, among other things,
8 dangerous when breathed and cause pathological effects without noticeable
9 trauma, although Defendants possessed knowledge that their Products were
10 dangerous and a threat to the health of persons coming into contact
11 therewith and were under a duty to disclose this.
12

13 h. Concealed from Plaintiff, his family members, and others similarly situated
14 the true nature of Plaintiff’s exposures, the fact that Defendants knew that
15 exposure to respirable asbestos meant that Plaintiff would inhale this
16 asbestos, significantly increasing his risk of developing asbestosis, lung
17 cancer, and mesothelioma; that Plaintiff that had in fact been exposed to
18 respirable asbestos; that the products to which Plaintiff was exposed would
19 cause pathological effects in the human body without noticeable or
20 perceptible trauma to warn him of injury; and Defendants engaged in these
21 acts and omissions while under a duty to and bound to disclose this
22 information.
23

24 i. Failed to provide information to the public at large including buyers, users
25 and physicians of Plaintiff for the purpose of conducting physical
26 examinations of anyone whom came in contact with asbestos as to the true
27 nature of the hazards of asbestos, in order for such physicians to diagnose
28

1 and treat individuals coming into contact with asbestos, in that the products
2 to which Plaintiff had been exposed would cause pathological effects
3 without noticeable trauma, even though Defendants were under a duty to
4 supply such information and such failure was and is likely to mislead
5 persons, including Plaintiff, as to the dangers and risk of harm to which they
6 were exposed.

7
8 j. Affirmatively misrepresented that Defendants' Products were safe to use
9 and handle, when Defendants knew such representations were false when
10 made, or made those false representations recklessly and without regard for
11 whether they were true.

12 85. Each of the foregoing acts, suggestions, assertions, and forbearances to act when a
13 duty existed to act, the said Defendants, and each of them, having such knowledge, knowing
14 Plaintiff TYLER WALL and his family members did not have such knowledge, and Plaintiff
15 would breathe such material innocently, was done falsely and fraudulently and with full intent to
16 induce Plaintiff to be in a dangerous environment and to cause him to remain unaware of the true
17 facts, all in violation of the Restatement (Second) of Torts §552, and *Barmettler v. Reno Air, Inc.*,
18 956 P2d 1382, 1387 (Nev. 1998).

19 BASIS FOR PUNITIVE DAMAGES

20
21 86. **Malice, Oppression, and Fraud:** Plaintiffs reallege the preceding paragraphs as if
22 fully set forth herein, and to the extent necessary, plead this cause of action in the alternative.
23 Defendants are liable for punitive damages because they engaged in the conduct that caused
24 Plaintiffs harm with malice, oppression, or fraud.

25
26 a. First, these Defendants committed malice in that they acted with intent to
27 harm when they caused Plaintiff TYLER WALL's asbestos exposures, and
28

1 because their conduct was despicable and was done with a willful and
2 knowing disregard of the rights and safety of others.

3 b. Second, these Defendants committed oppression in that their conduct was
4 despicable and subjected Plaintiff to cruel and unjust hardship in knowing
5 disregard of his rights.

6 c. Third, the Defendants committed fraud in that they intentionally and
7 fraudulently made false representations and did so intending to harm
8 Plaintiff, or with reckless disregard for whether their fraud would harm
9 Plaintiff.
10 Plaintiff.

11 87. These Defendants' conduct constituting malice, oppression, and fraud was
12 committed by, authorized by, and adopted by one or more officers, directors, and managing agents
13 within the corporate hierarchy of each Defendant, who acted on behalf of each Defendant.
14

15 88. As a direct and proximate result of such intentional conduct by Defendants, their
16 "alternate entities", and each of them, Plaintiff TYLER WALL sustained the injuries, illnesses,
17 disabilities, and damages alleged herein.

18 **DAMAGES**
19 **LOSS OF CONSORTIUM**

20 89. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth
21 herein.

22 90. Plaintiffs TYLER WALL and LORISSA HOTTEL were married on June 9, 2011,
23 and have remained married at all times material hereto.

24 91. As a direct and proximate result of the injuries, illnesses, disabilities and/or
25 damages complained of herein with respect to Plaintiff TYLER WALL, and as a direct and
26 proximate result of the acts and omissions of the Defendants, Plaintiff LORISSA HOTTEL has
27 also suffered and will continue to suffer loss of consortium, society, companionship, fellowship
28

1 and other valuable services of her husband; and therefore, Plaintiff LORISSA HOTTEL is entitled
 2 to damages for her loss of consortium, both past and future.

3 **COMPENSATORY AND PUNITIVE DAMAGES**

4 92. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth
 5 herein.

6 93. As a result of the above-alleged conduct of the Defendants, Plaintiff TYLER
 7 WALL developed mesothelioma, as a consequence of which he has been damaged as follows:

- 8 a. hospital and medical expenses incidental to Plaintiff TYLER WALL's
- 9 illness;
- 10 b. loss of earnings and future earning power of Plaintiff TYLER WALL;
- 11 c. loss of Plaintiff TYLER WALL's general health, strength, and vitality;
- 12 d. loss of pecuniary contributions to the heirs of Plaintiff TYLER WALL;
- 13 e. loss of consortium, society, aid, companionship and services to the heirs of
- 14 Plaintiff TYLER WALL;
- 15 f. future loss of consortium, society, aid, companionship and services to the
- 16 heirs of Plaintiff TYLER WALL;
- 17 g. pain and suffering of Plaintiff TYLER WALL;
- 18 h. all other damages recoverable under said Act.

19 WHEREFORE, Plaintiffs verily believe they are entitled to actual damages against the
 20 Defendants, jointly and severally, by reason of said negligence, gross negligence, breach of
 21 warranty, false representation, failure to warn, fraud, and other breaches of duty, and willful,
 22 wanton, and malicious conduct as alleged herein proximately caused by the fault of the
 23 Defendants. PLAINTIFFS pray for judgment against all Defendants for actual and punitive
 24 damages, lost wages and special damages in an amount to be determined by the trier of fact, in
 25 excess of \$75,000.00 plus interest as provided by law and the costs of this action.
 26
 27
 28

DEMAND FOR JURY TRIAL

Pursuant to FED. R. CIV. P. 38(b), Plaintiffs respectfully demands a jury trial on the issues triable by jury

DATED this 28th day of September, 2021.

HENNESS & HAIGHT INJURY LAW

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